

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA,)	
Respondent,)	
)	
v.)	No. 2:13-CR-34(10)
)	
)	
JASON CURTIS JONES,)	
Petitioner.)	

MEMORANDUM AND ORDER

This criminal case is before the Court on the defendant's motion for a reduction of sentence, [Doc. 710]. The defendant requests a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2) and USSG § 1B1.10 as amended by Amendments 780 and 782 to the United States Sentencing Guidelines. The United States has responded and acknowledges the defendant is eligible for a reduction in sentence but defers to the Court's discretion whether and to what extent to reduce defendant's sentence, [Doc. 714]. The motion will be GRANTED in part.

The defendant was convicted of participating in a conspiracy to distribute oxycodone in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(A). He was held accountable for at least 201,720 milligrams of oxycodone, resulting in a base offense level of 32. The base offense level was decreased by three levels pursuant to USSG § 3E1.1(a) & (b) (acceptance of responsibility), resulting in a total offense level of 29. The defendant's criminal history category was III resulting in an advisory guideline range of 108 months to 135 months. The United States filed a motion for downward departure pursuant to USSG § 5K1.1, which the Court granted and lowered the defendant's offense level from 29 to 27. Based on an offense level of 27 and a criminal history category of III, the defendant's guideline range was 87 months to 108 months at the time of

sentencing. The defendant was ultimately sentenced to 78 months after the Court granted the defendant's request for a variance.

“Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions.” *Freeman v. United States*, 131 S. Ct. 2685, 2690 (2011) (internal citation and quotation marks omitted). Title 18 United States Code § 3582(c)(2), however, gives a district court authority to modify a term of imprisonment that has been imposed on a defendant “who has been sentenced to a term of imprisonment based on a sentencing range that has been subsequently lowered by the Sentencing Commission,” 18 U.S.C. § 3582(c), through a retroactively applicable amendment such as Amendment 782. *Id.*; USSG § 1B1.10. The Court may reduce the term, “after considering the factors set forth in § 3553(a) to the extent they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2). Section 1B1.10 identifies the guideline amendments that may be applied retroactively, and sets out the factors for deciding a sentence reduction motion under § 3582(c). The Supreme Court has made clear that § 3582 does not require a sentencing or resentencing proceeding, but gives courts the power to reduce an otherwise final sentence under circumstances established by the Sentencing Commission. *Dillon v. United States*, 560 U.S. 817 (2010); *United States v. Curry*, 606 F.3d 323, 330 (6th Cir. 2010); USSG § 1B1.10, cmt. background (noting that a reduction under § 1B1.10 is discretionary and “does not entitle a defendant to a reduced term of imprisonment as a matter of right”).

Section 3582(c)(2) establishes a two-step inquiry: First, the court must determine whether the defendant is eligible for a sentence reduction. If he is, the court must then consider whether, in its discretion, the authorized reduction is warranted in whole or in part under the circumstances.

Dillon, 130 S. Ct. at 2691-92; *United States v. Greenwood*, 521 Fed. App'x 544, 547 (6th Cir. 2013). In exercising its discretion, the court is required to consider public safety factors and is permitted to consider post-sentencing conduct in deciding whether a reduction in the defendant's term of imprisonment is warranted. USSG § 1B1.10, cmt. (n. 1(B)(ii)-(iii)). Thus, the district court is required to consider both the § 3553(a) factors and "the nature and seriousness of the danger to any person or the community that may be posed by a reduction in defendant's term of imprisonment." *Curry*, 606 F.3d at 330 (quoting USSG § 1B1.10, cmt. n. 1(B)(ii)).

One other factor is relevant to the instant motion. Ordinarily, a defendant's sentence may not be reduced to a term "less than the minimum of the amended guideline range." USSG § 1B1.10(b)(2)(A). But where, as here, the defendant previously received a below-guideline sentence "pursuant to a government motion to reflect the defendant's substantial assistance to authorities," the Court has authority to grant a reduction "comparably less than the amended guideline range." USSG § 1B1.10(b)(2)(B). It is perfectly logical that the extent of the reduction should be determined based on the extent of assistance. Based on the USSG amendments, the defendant received a two level reduction to an offense level of 27, combined with a criminal history category of III resulting in an amended guideline range of 87 to 108 months.

The defendant requests a reduced sentence of 63 months. The defendant calculates that at the time he was sentenced to 78 months, this departure equates to a 28% departure from the bottom of the guideline range of 87 months. The defendant argues that he is entitled to receive the same 28% reduction from the bottom of his amended guideline range. The government agrees with this calculation. However, the reduction for substantial assistance was merely 19% (108 months reduced to 87 months based on the government's motion for downward departure). The remaining departure from 87 months to 78 months was based on the defendant's requested

variance, not the government's substantial assistance motion. USSG § 1B1.10(b)(2)(A) allows a reduction below the amended guideline range but only to the extent comparable to the reduction given for the substantial assistance to the government at the time of the original sentencing. A 19% reduction from the bottom of the defendant's new guideline range 87 months is appropriate here. Therefore, the defendant's motion, [Doc. 710], is GRANTED, and his sentence will be reduced to a term of 70 months.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE